

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1089V

UNPUBLISHED

MARIA DIMINNO, as Personal
Representative of the Estate of
PASQUALE DIMINNO,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 3, 2022

Special Processing Unit (SPU); Joint
Stipulation on Damages; Influenza
(Flu) Vaccine; Guillain-Barre
Syndrome (GBS)

*Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for
Petitioner.*

Emilie Williams, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON JOINT STIPULATION¹

On July 29, 2019, Maria DiMinno, as the Personal Representative of the Estate of her husband Pasquale DiMinno, filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that her husband Pasquale DiMinno suffered injuries, including Guillain-Barré syndrome (“GBS”) and death, following the receipt of the influenza (“flu”) vaccine he received on October 18, 2017. Petition at 1, ¶¶ 1, 5; Stipulation, filed at Feb. 3, 2022, ¶¶ 1-2, 4. Petitioner further alleges her husband received the vaccine in the United States, that he passed away as a result of his GBS, and that no party has filed a civil action or received compensation for Mr. DiMinno’s GBS. Petition at ¶¶ 1, 5-7;

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Stipulation at ¶¶ 3-5. “Respondent denies that the vaccine caused Mr. DiMinno to develop any of the alleged injuries, any other injury or condition, or his death.” Stipulation at ¶ 6.

Nevertheless, on February 3, 2022, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. I find the stipulation reasonable and adopt it as my decision awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **I award** the following compensation:

A lump sum of \$275,000.00 in the form of a check payable to Petitioner, as the Personal Representative of the Estate of Pasquale DiMinno. Stipulation at ¶ 8. This amount represents compensation for all items of damages that would be available under Section 15(a). *Id.*

I approve the requested amount for Petitioner’s compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties’ joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

MARIA DIMINNO, as Personal
Representative of the Estate of Pasquale
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v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 19-1089V
Chief Special Master Corcoran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, Maria DiMinno, as Personal Representative of the Estate of Pasquale DiMinno, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program") on July 29, 2019. The petition seeks compensation for injuries leading to the death of Pasquale DiMinno ("Mr. DiMinno") allegedly related to his receipt of an influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Mr. DiMinno received the vaccine on or about October 18, 2017.
3. The vaccine was administered within the United States.
4. The petition alleges that the flu vaccine caused Mr. DiMinno to suffer Guillain-Barre Syndrome ("GBS"), which ultimately caused his death.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on Mr. DiMinno's behalf, or on behalf of Mr. DiMinno's estate, as a result

of Mr. DiMinno's alleged injury or death.

6. Respondent denies that the vaccine caused Mr. DiMinno to develop any of the alleged injuries, any other injury or condition, or his death.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of ~~\$275,000.00~~ in the form of a check payable to petitioner, as legal representative of the estate of Pasquale DiMinno. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and petitioner's attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security

Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis, and represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g).

11. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that petitioner presently is, or within 90 days of the date of judgment will become, duly authorized to serve as the legal representative of Pasquale DiMinno's estate under the laws of the State of Florida. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing petitioner's appointment as legal representative of Mr. DiMinno's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the estate of Pasquale DiMinno at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal representative of the estate of Pasquale DiMinno upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in petitioner's individual capacity, and as personal representative of the estate of Pasquale DiMinno, on petitioner's own behalf and on behalf of the estate and Mr. DiMinno's heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have

been brought, could have been brought, or could be timely brought in the United States Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Mr. DiMinno resulting from, or alleged to have resulted from, the vaccination as alleged by petitioner in a petition for vaccine compensation filed on or about July 29, 2019, in the United States Court of Federal Claims as petition No. 19-1089V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the United States Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the items of compensation sought, is not grounds to modify or revise this agreement.


16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the vaccine caused Mr. DiMinno's alleged injuries or death, or any other injury.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as personal representative of the estate of Pasquale DiMinno.


END OF STIPULATION

Respectfully submitted,


PETITIONER:


Maria DiMinno

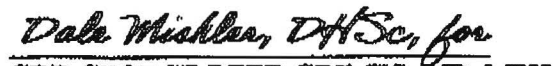
**ATTORNEY OF RECORD
FOR PETITIONER:**


LEAH V. DURANT
Attorney for Petitioner
Law Offices of Leah V. Durant, PLLC
1717 K Street NW, Suite 900
Washington, DC
Tel: 202-775-9200

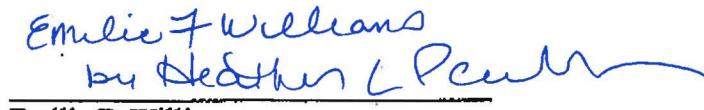
**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


HEATHER L. PEARLMAN
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**


CDR GEORGE REED GRIMES, MD, MPH
Director, Division of Injury
Compensation Programs
Health Systems Bureau
Health Resources and Services
Administration
U.S. Department of Health
and Human Services
5600 Fishers Lane, 08N146B
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


Emilie F. Williams
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
Tel: 202-305-0124
Email: Emilie.williams@usdoj.gov

Dated: 02/01/2022